

NANCY J. AUSTIN

VS.

GENERAL MOTORS CORPORATION

Respondent

Self-Insured

Docket No. 199,074

The Appeals Board has limited jurisdiction to review preliminary hearing orders. K.S.A. 1997 Supp. 44-551(b)(2)(A) provides that “If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge’s jurisdiction in granting or

denying the relief requested at the preliminary hearing.” In addition, K.S.A. 1997 Supp. 44-534a(a)(2) lists several findings concerning issues which, if in dispute, are to be considered jurisdictional and subject to review by the Board. A finding concerning the furnishing of medical treatment is not one of those jurisdictional issues.

K.S.A. 1997 Supp. 44-534a gives an administrative law judge the authority to conduct a preliminary hearing which shall be summary in nature and “Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation” (Emphasis added.) K.S.A. 1997 Supp. 44-534a(a)(2). The employee’s entitlement to compensation is not disputed. What is disputed is the Administrative Law Judge’s authority to grant the denial of the medical benefits as requested by respondent at the preliminary hearing. According to claimant, what makes this issue jurisdictional and, therefore, appealable to the Appeals Board from a preliminary order is the fact that the order was entered 19 days after the preliminary hearing. In other words, it is not that the Administrative Law Judge declined to order continued payment of the medical treatment that makes this a jurisdictional issue, but rather his timing in doing so. K.S.A. 1997 Supp. 44-534a(a)(2) requires preliminary hearing decisions to be rendered within five days of the conclusion of the hearing.

At the conclusion of the November 20, 1997, hearing, the Administrative Law Judge desired additional information: specifically a report from the treating psychiatrist Dr. Varanka. The Administrative Law Judge took the matter under advisement and directed counsel for respondent to get a report. When no report was forthcoming, the Administrative Law Judge entered the Temporary Preliminary Decision that is apparently intended to be in effect until the requested report is received. It also appears to the Board that the Administrative Law Judge initially intended to keep the preliminary hearing record open until the report was received. But when it became apparent that the report he requested was not going to be timely received, he issued an order. That order does not foreclose, but rather anticipates a reconsideration of the underlying issue of medical treatment upon the court’s receipt of the requested report.

K.S.A. 1997 Supp. 44-534a makes the awarding of preliminary benefits discretionary and not mandatory. Accordingly, the underlying issue raised by claimant concerning whether or not continued medical treatment should have been ordered paid by respondent, is not a jurisdictional issue. That issue is not appealable to the Appeals Board from a preliminary hearing. Furthermore, regardless of whether or not leaving the record open to receive additional evidence means that the Administrative Law Judge’s order was “rendered within five days of the conclusion of such hearing,” the order terminating benefits is also not appealable because exceeding the five-day period does not divest the Administrative Law Judge of jurisdiction to render a decision.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review the December 9, 1997, Temporary Preliminary Decision at this juncture of the proceeding and that this review should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

c: Michael R. Wallace, Shawnee Mission, KS
Sean B. Summers, Kansas City, MO
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director